

Human Services Board, Richard Whitaker, and Christina Byrom

Shelley Simpson, Hearing Officer

March 23, 1995

Fair Hearing No. 13,373

INTRODUCTION

The petitioner appeals a determination by the Department of Social Welfare denying her an "explanation of benefits" form in connection with her receipt of Medicaid.

PROPOSED FINDINGS OF FACT

1. The petitioner is a disabled person who receives Medicaid benefits. She has asked the Department to provide her with an "explanation of benefits" (EOB) form when health providers request payment from

her Medicaid account, similar to ones provided by private insurers. She expects that form to detail to whom payment is made, date of services, services rendered, the name of health care professional providing the service, and costs of the service.

2. The Department has provided her with information on specific payments when she makes inquiries but has refused to generate regular EOB letters because the claims processing system used by the Medicaid program does not have the capacity to produce such a form. The Department maintains that its system is designed to meet the specifications required by the federal government which contains no requirement that states generate EOB information.

3. The petitioner asks for EOB forms for several reasons: it is a more efficient and prudent way for the Department to operate; it prevents provider fraud; and it gives the recipient information which might affect the way that health benefits are sought, especially in those programs such as chiropractic, mental health and dental care which have maximum payment limits. She has not been satisfied with specific printouts provided to her on payments to providers pursuant to her requests because they contain incomplete information and use codes which are not always decipherable.

4. The petitioner herself is not aware of any specific instances where a provider did or might have obtained fraudulent payments through her account nor has she used any of the services which have maximum payments. She could plead no specific harm due to the Department's failure to use EOB forms other than the general indirect harm which accrues to her, as well as to others, when the Department is forced to curtail programs because of budget deficits. She specifically cited recent cuts in a weekly supper sponsored by the Department for disabled persons and cuts in a newspaper funded by the Department for which she is a contributing writer. The petitioner believes the money saved on provider fraud by use of an EOB system could be used for these other enterprises.

5. The petitioner also points out that the Department of Mental Health and Mental Retardation does provide more information to persons who have health services paid through that Department.

6. The Department currently safeguards against provider fraud through the use of random sampling. No evidence was offered as to the efficacy of that method.

The Department maintains, in addition, that providers themselves can tell recipients which bills have been paid and which have not.

RECOMMENDATION

The decision of the Department should be affirmed.

REASONS

The petitioner's request in this matter is not patently unreasonable and certainly there may be some merit to her claim that EOB forms would help to prevent fraud. However, the petitioner could point to no federal or state law or regulation which would require the Department to adopt such a methodology. See 42 U.S.C. § a et seq., and 42 C.F.R. § 447 et seq.

The Department's regulations require that providers send claims to the Department for services given to

an eligible recipient with payment for the claims going directly to the provider. M 101. It is the Department's obligation to "assure that mechanisms exist for the payment of reimbursable expenses". M250.2. The Department is required to keep records of decisions and the facts used to make them. M102. The Department is also required to notify applicants of decisions regarding their eligibility for benefits. M141. However, there is no regulation requiring that the Department give recipients notices explaining how their benefits were paid out to providers.

The petitioner does not argue that such a regulation exists. Rather, she says, without elaboration, that her right to such a notice is protected by the Fourteenth Amendment of the United States Constitution which guarantees her due process and equal protection of the law. The petitioner, who has the burden of showing the violation of her constitutional rights, has constructed no argument in support of her contentions. Given the fact that she has shown no loss of Medicaid eligibility or benefits from this policy of the Department, it is difficult to construct arguments for her. She has shown no deprivation of any property interest at the hands of the government which would be sufficient to prompt a further analysis of whether the state's policy is unfair or unequal in its treatment of Medicaid recipients.

As the petitioner has offered no persuasive grounds that the Department is acting illegally in not promulgating the use of EOB forms, its decision to deny them to the petitioner must be upheld. The petitioner's argument, at least at this point, is less a judicially redressable grievance than a disagreement about what goals and policies it might be wise for the Department to pursue. Such a grievance might be better resolved through discussions with the Department and through citizen input during the regulatory promulgation processes than through judicial or quasi-judicial avenues.

THIS MATTER WILL BE CONSIDERED BY THE BOARD AT A MEETING IN MONTPELIER ON WEDNESDAY, MARCH 29, 1995. THE MEETING WILL BE HELD AT THE HUMAN SERVICES BOARD'S OFFICE AT 118 STATE STREET, 2ND FLOOR, MONTPELIER, AND WILL BEGIN AT 9:30 A.M.